**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE M.N.KRISHNAN**

**FRIDAY, THE 22ND JUNE 2007 / 1ST ASHADHA 1929**

**WP(C).No. 17710 of 2007(G)**
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**OS.568/2002 of 1ST ADDL.M.C.,KOZHIKODE-I**
**.....**

**PETITIONER:**
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**KERALA NADVATHUL MUJAHIDEEN,**
**REP. BY ITS GENERAL SECRETARY, ABDULKHADER MOULAVI, S/O. SAINUDHEEN, AGED 74 YEARS, NAGARAM AMSOM, DESOM, KOZHIKODE TALUK.**

**BY ADV. SRI.K.S.HARIHARAPUTHRAN**
**SRI.M.D.SASIKUMARAN**
**SRI.P.J.JOSEPH**
**SRI.GEORGE MATHEW**
**SRI.K.B.SIVARAMAKRISHNAN**
**SRI.A.V.TELLES**

**RESPONDENTS:**
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**1. HUSSAIN MADAVOOR, S/O. ABOOBACKER KOYA, PUNATHUMKUZHIYIL HOUSE, MADAVOOR P.O., KOZHIKODE.**

**2. P.C.AHAMMAD, S/O. ABDU, KENHIRANDI HOUSE, SULTHAN BATHERI, WAYANAD DISTRICT.**

**BY ADV. SRI.C.KHALID**
**SRI.B.G.BHASKAR**
**SRI.T.H.ABDUL AZEEZ**
**SRI.R.O.MUHAMED SHEMEEM**
**SRI.T.P.SAJID**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**APPENDIX**

**EXT. P1** **TRUE COPY OF THE PLAINT IN OS.568/02 ON THE FILE OF THE MUNSIFF'S COURT KOZHIKODE-1.**

**EXT.P2** **TRUE COPY OF THE WRITTEN STATEMENT.**

**EXT.P3** **TRUE COPY OF THE PETITION FILED I.A.2068/07 IN EXT.P1 SUIT.**

**EXT.P4** **A TYPE WRITTEN COPY OF THE ORDER PASSED BY THE LEARNED TRIAL COURT.**

[ True copy ]

P.A. to Judge.

**M.N. KRISHNAN, J.**

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**W.P.C. NO. 17710 OF 2007**

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**Dated this the 22nd day of June, 2007.**

**J U D G M E N T**

This writ petition is filed seeking to quash Ext.P4 order passed by the Court below in O.S.568/02. The writ petitioner moved an application I.A.2068/07 to consider the maintainability issue as a preliminary issue and the Court did not accede to that request and rejected that prayer.

2. It is against that decision the present writ petition is filed. The learned counsel for the writ petitioner argues that the question raised will come within the ambit of order 14 Rule 2 (2)(b) and therefore the Court should have considered it as a preliminary issue and disposed of the matter. It is worthwhile to refer to the difference that has taken place to Order 14 of the C.P.C. Until the amendment to Rule 14(2) it was a mandatory duty cast upon the Court to dispose of the matter where a question of law is involved. But subsequent to the amendment of the Code, rule is as follows: First of all the discretion is vested with the Court and

secondly it is stated that if there is an issue relating to the jurisdiction of the Court or a bar to the suit created by any law for the time being in force, for that purpose the Court may consider that issue and postpone the settlement of the other issues until that issue has been determined. Or in other words, by virtue of the amendment to Order 14 of the Amendment Act, 1976 a wide discretion is given to the Court regarding the disposal of the case at a preliminary stage. A reading of the objects and reasons also makes it manifestly clear that it was introduced with the purpose that unnecessary protraction of proceedings should be averted. If a case is to be disposed of simply on a question as a preliminary issue then the said finding will be challenged in one or two courts and the trial of the suit will get automatically postponed. So it is only to avert that such an amendment is made to the C.P.C. It is also clear from the provisions of the C.P.C. that when such an issue has to be considered as a preliminary issue it is to be raised and the Court has to postpone the framing of other issues. So the

purpose is very clear. As far as this case is concerned it can be seen that the suit has been listed for trial and it was posted on 1-6-07. I am informed by the counsel appearing for the parties that there were other stages where the plaint has undergone amendment etc. and even additional issues has been raised in this case. So, if really the cardinal question to be decided is regarding the maintainability as now projected by the plaintiff he should have done it at the earlier stage and not thereafter.

3. The other thing which I may like to point out is the Court which deals with the matter has used its discretion and found that it is not to be considered as a preliminary issue and therefore decided to try the case along with other issues. The learned counsel for the writ petitioner has pointed out to me that the very same Presiding Officer has taken a view in the other case regarding the maintainability issue and the very same officer is deciding this case as well. In that case also the learned Presiding Officer had only considered the issues along with other matters and this

plaintiff did not have any objection to hear it as a preliminary issue at any point of time. So after having an adverse finding in another suit, now the attempt to consider this as a preliminary issue and decide may not be in conformity with the object of the order 14 Rule 2 (2)(b). Therefore, without going into other merits of the case, I find no ground to interfere with the decision rendered by the learned Munsiff and hence this writ petition is dismissed.

The learned counsel for the writ petitioner submits that he wants a breathing time to adduce evidence and the other counsel submitted that this case is posted to 29.6.07. For any genuine reason time is required, a reasonable time may be granted and the matter be proceeded and disposed of as expeditiously as possible.

**M.N. KRISHNAN, JUDGE.**

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